

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13826
Docket No. 13716
05-2-03-2-61

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway Carman Division of TCU
(Delaware and Hudson Railway Company (Division of
(CP Rail System)

STATEMENT OF CLAIM:

- “1. That the Delaware and Hudson Railway Company (Division of CP Rail System) violated the terms of our current Agreement, in particular Rule 16.1 when they failed to return Carman Frank Possemato to service in a timely manner after release from his personal physician.
2. That accordingly, the Delaware and Hudson Railway Company be required to compensate Carman Frank Possemato in the amount of eight (8) hours pay, at the straight-time rate from January 20, 2003, up to February 5, 2003, when he was finally returned to active service.”

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On January 10, 2003, the Claimant was released by his personal physician to return to work. The Claimant gave the release to his supervisor who faxed the documentation to the Carrier's chief medical officer for review. The Claimant was advised to send additional medical reports to the Carrier's chief medical officer, which he faxed on January 15, 2003. On January 17, 2003, the Carrier's occupational health manager wrote the Claimant to advise him that the records were illegible and requested better copies of the reports. On January 27, 2003, the Claimant's wife called the Carrier's medical services department requesting the Carrier's chief medical officer call the Claimant's personal physician. On January 28, 2003, the Carrier's chief medical officer called the Claimant's personal physician and the Claimant was released to return to work. On January 30, 2003, the Claimant took the appropriate return to work exam and screens. On February 5, 2003, the Claimant was returned to work.

The claim alleges that Claimant was not returned to work in a timely manner. We agree.

The Carrier was certainly within its rights to request legible copies of the Claimant's medical records. However, the delay that we deem relevant is the one that occurred beginning January 17, 2003 when the Carrier's occupational health manager wrote the Claimant to advise him of the problem with his records. A simple phone call to the Claimant advising him of the problem the chief medical officer was having with the records would have expedited the Claimant's return to work. We are satisfied that writing a letter to the Claimant rather than making a phone call to him (which could have been followed by a letter) delayed the Claimant's ability to return to work by five days. Claimant shall therefore be compensated for five days.

AWARD

Claim sustained in accordance with the Findings.

ORDER

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This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 1st day of April 2005.